

EXHIBIT J

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COPY

JAMES JIRAK AND ROBERT PEDERSEN,
Plaintiffs,

vs.

No. 07-C-3626

ABBOTT LABORATORIES, INC.,
Defendant.

VIDEO DEPOSITION OF JERRY ROGERS
TAKEN ON BEHALF OF THE DEFENDANT
ON SEPTEMBER 18, 2009, BEGINNING AT 9:12 A.M.
IN LITTLE ROCK, ARKANSAS
REPORTED BY: KERRI PIANALTO, CCR

APPEARANCES:

On behalf of the PLAINTIFFS

Caleb H. Liang
KINGSLEY & KINGSLEY
16133 Ventura Boulevard, Suite 1200
Encino, California 91436
cliang@kingsleykingsley.com

On behalf of the DEFENDANT

Sara P. Leitenberger
JONES DAY
77 West Wacker
Chicago, Illinois 60601
sleitenberger@jonesday.com

Videographer: Sean Shell

1 verbal agreement.

2 Q A verbal agreement for the physician to
3 write for Abbott product?

4 A Right.

5 Q How was it decided which physicians you
6 would visit on your calls?

7 A Marketing sent out a list or someone,
8 administration, marketing, sales management,
9 someone sent the list out. In the timeframe that
10 we're speaking about specifically because they got
11 more and more tailored and less and less
12 flexibility to who you called on, so someone would
13 send the list out and these were the doctors that
14 according to all of the marketing and the
15 management you're calling on and here's the
16 frequency and here's how you, you know.

17 Q So from 2005 to 2008, you received a list
18 from --

19 A Yes.

20 Q -- someone at Abbott?

21 A Yes.

22 Q And what information did this list
23 contain?

24 A It usually broke the physicians down by
25 psychiatry, neurology. It had things like names,

1 addresses, zip codes, specialties, personal
2 information about physicians. It might have their
3 birthday on it. It might have things you could
4 use, you know, in sales, but it would have just
5 general information about a customer or a physician
6 that you were going to call on and enough that you
7 could know where to go and maybe, you know, hours
8 of the office and things like that. You would just
9 get data that would help you with your direction.

10 Q And you mentioned also frequency, was that
11 on the list as well?

12 A Yes.

13 Q And when we say frequency, is that like
14 you will see Dr. X four times?

15 A Right.

16 Q Any other information that the call plan
17 contained other than physician information, names,
18 addresses, identifiers and frequency information?

19 A They oftentimes were rated by a number.
20 But with the exception of that, it could have, you
21 know, it could have a rating of whether they were
22 top rated or bottom rated or middle rated or
23 whatever. But I can't think of anything else other
24 than that.

25 Q And after receiving the list from Abbott,

1 could be working the same one again.

2 Q And how many file cards did you have from
3 2005 to 2008 at any one time typically?

4 A One for each physician.

5 Q And how many pieces of competitor
6 literature did you have that you could use on sales
7 calls from 2005 to 2008?

8 A I would just say a few.

9 Q And how many sales aids did you have from
10 2005 to 2008 at any given time, any one time?

11 A Three. Those were permanent. They
12 weren't leave behinds so you would have three in
13 case you lost one, in case one got damaged or
14 something, so usually about three of those.

15 Q So were those three sales aids identical
16 copies of each other?

17 A Yes.

18 Q Let me go back a little bit just to make
19 sure I'm clear. I'm more curious about what you
20 had access to in terms of what you could bring to a
21 sales call. So in terms of number of studies from
22 universities you had at any particular time, how
23 many options did you have at a time to choose from?

24 MR. LIANG: Objection, assumes facts not
25 in evidence.

1 A I might have access to four, three or four
2 studies that were going on or that had been -- it
3 had to be published and there might be as many as
4 three or four and the companies would direct you on
5 which ones to use and they might direct you on
6 which one to use with which physician, but that was
7 about the extent. You didn't have ten or 12 and
8 you didn't just have one and oftentimes two to
9 choose from, but generally you would have, you
10 know, maybe up to two or three that you could
11 choose to fit this particular physician.

12 Q (BY MS. LEITENBERGER) And then how many
13 file cards would you have to choose from at any
14 given time?

15 A Just always one. It has to be FDA
16 regulated so there was just one.

17 Q And how many pieces of competitor
18 literature would you have to choose from?

19 A That was just an occasional thing where
20 you might have it. You were not allowed to use it
21 in the doctor's office because you weren't
22 promoting that drug so it was just something that
23 you had that you knew what they were promoting
24 with. And you just occasionally would get a hold
25 of something like that.

1 Q And then I think you said you had one
2 sales aid then?

3 A Yeah, one permanent one that you carried
4 and then a couple of backups that are the exactly
5 the same thing.

6 Q And on a given call, how did you pick
7 whether you would use a sales aid, a study or some
8 combination of these sales materials?

9 MR. LIANG: I'm going to object that it
10 assumes facts not in evidence.

11 A The direction came down from the company
12 that you would use the sales aid, not just wing it,
13 you would use it. And the second thing that came
14 from the company is this is the study we're using
15 this call cycle, this time around, this three weeks
16 or it might be a period of what we called a
17 trimester. So we would be using this particular
18 study and sometimes we would use it twice or maybe
19 we might even go in with it if it's a really good
20 study the third time.

21 So that was pretty well -- we used what
22 was directed to be used and the file card was left.
23 You always had to leave side effects and all of
24 those things and all of that data that was required
25 by legal -- by FDA regulations was in the file card

1 so you had to leave that.

2 Q (BY MS. LEITENBERGER) How many pages was
3 a typical sales aid?

4 A Eight or ten.

5 Q And so you said Abbott directed that you
6 use the sales aid on every call; is that right?

7 A Yes.

8 Q How did you pick where on the sales aid
9 you used in those eight to ten pages?

10 A That was practiced at meetings on how to
11 start the sales call. Generally, they were one,
12 two, three page and you would walk through it, but
13 it could be that the company's marketing decided we
14 want to start here and you go back to two and then
15 go to four and then go to ten or eight or ten and
16 close the call. So we were given direction on how
17 to use those at meetings.

18 Q And so you were given direction on how to
19 use them. Did you then use it that way on every
20 sales call even if you had 30 seconds versus 15
21 minutes with the doctor?

22 A You attempted to, you attempted to have a
23 structure to your call, but if the physician said I
24 will give you a minute, two minutes, I've got to go
25 to the hospital or I've got a patient, I'll give

1 you two minutes, then you had the discretion of
2 tailoring your call and doing a brief or what we
3 call a quickie kind of a brief call and that could
4 vary or would vary from where you had plenty of
5 time to sit down in the office and go through it.

6 Q And so if you were given less time, you
7 would have to pick which portion of the message you
8 wanted to give?

9 A Right. Yes.

10 Q You mentioned sampling as part of your job
11 duties, right?

12 A Yes.

13 Q How was sampling handled? And what I mean
14 by that is, did you give samples on every call?

15 A No.

16 Q Did you have a limited number of samples
17 to give?

18 A Yes.

19 Q And how did you determine which physicians
20 you gave samples to versus those that you didn't?

21 A They had to request them. That's what the
22 law says.

23 Q Any other factors that went into who -- to
24 whom you gave samples or not?

25 A The usage history of samples might

1 physician, but as far as the sales message, the
2 presentation itself, I could not change that or
3 tailor that, so I just -- I think it's the
4 percentage or the amount that would have to do with
5 that being true. You know, we nudged and leaned
6 people certain directions because of what we knew,
7 but as far as tailoring, going in there with my own
8 message and tailoring a sales presentation to that
9 particular physician, it was not something that we
10 did.

11 So that -- the way the manager has written
12 this sounds fine with you and I talking or with me
13 talking with someone in the company, but as far as
14 exactly how that played out, that's not totally
15 true.

16 Q So you talked about not being able to
17 adjust the message, but you could interject into
18 it?

19 A Yeah.

20 Q When you say not being able to change the
21 message, what is the message; does that make sense?

22 A Well, when you go to a meeting prior to
23 the start of a trimester or whatever, you practice
24 these messages and you know what marketing's
25 message is and you know what the five points of the

1 message are. You know what we're trying to get
2 across. So as long as you get that in with your
3 wording, that's what made a person unique and more
4 successful and that kind of thing, how you get that
5 message across with your wording.

6 So when I look at this, I see that
7 tailoring message is, yeah, I can tailor it to some
8 very limited degree by saying the words a little
9 differently and interjecting something I felt like
10 what was important because I knew this doctor and
11 how -- what their personality was or how they
12 thought or whatever. So we, you know, we were in
13 tune with that, but that's the difference.

14 Q And those five points in a message, are
15 those sentence-long points, are they words? In
16 other words, a five point message, is that
17 efficacy, safety? Does that make sense?

18 A Yeah, it makes sense and it really could
19 be either. It could be either. It just depends on
20 what's coming down right now. It could be strictly
21 a five-point message or it could back up and be
22 structural five-point message where you have an
23 opening -- you have an attention-getter and you
24 have an opening and you have a body to the message
25 and all, it could be that way. And in different

1 regional or even the company, your territory ranked
2 here so it was -- it became almost a roll of the
3 wheel or a game of luck as far as how you finished
4 according to the dynamics that were going on
5 negative or positive within the territory.

6 Q So do you believe your bonus was based
7 primarily on luck?

8 A Well, it wasn't based primarily on luck,
9 but you could work, you know, you could work
10 yourself to death and not make much bonus so we all
11 knew that it wasn't -- we didn't have control of
12 it. We couldn't go out and work a lot harder and
13 make a big difference in it. And we could not even
14 work or be in the territory, pregnancy leave is a
15 good example, and make a great bonus.

16 Q Do you believe you had any influence over
17 --

18 A Definitely, yes.

19 Q -- the amount of bonus?

20 How so?

21 A Well, year after year, bonus after bonus,
22 if you always did bad, then, you know, it reflected
23 the fact that you weren't either a very good rep or
24 weren't working hard. But it could sure vary from
25 one trimester to the next or one year to the next

1 according to the dynamics that was going on within
2 your geography. So, you know, I think you could
3 influence it somewhat by working hard and, you
4 know, but you sure had to have some luck involved
5 with it.

6 Q When you say you could influence it by
7 working hard, what do you mean by that?

8 A Well, all of the goals that they gave you
9 or all of the directions they gave you as a
10 company, whether it was reach and frequency or
11 calls or whatever, we used to say it seems like the
12 harder I work the luckier I get, and that's true.
13 You could, you know, I think you could influence it
14 but there were no guarantees with influencing it no
15 matter how hard you worked or how lax you became
16 within it, you know. But year after year, you
17 know, the more effort you put in and all, I believe
18 it would make a slight difference in where your
19 standings were and how they stayed there.

20 Q And so you said it could influence it
21 through reach and frequency; any other ways it
22 could influence it? Let me ask that question
23 better. Any other ways you could influence whether
24 you received a bonus or not?

25 A No.

1 Q When you received the bonus of
2 approximately \$10,000 in August 2006, did you ask
3 your manager if you could give it back because you
4 didn't feel it reflected your ability as a sales
5 rep?

6 A No.

7 Q Why not?

8 A Because I had been lucky enough to have
9 that territory and have that job and the year
10 before I may not have made anything or the semester
11 before I may have felt like I really got unfairly
12 compensated because it was more of a luck
13 situation. So when I received a bonus like this I
14 was glad to get it and I took it.

15 Q Even though you thought you had little
16 influence over the sales in that area?

17 MR. LIANG: Objection, misstates his
18 testimony.

19 A I wouldn't say little influence. I would
20 say, you know, that I was doing day in and day out
21 doing the same thing, putting the same hours in and
22 so, you know, you were lucky or unlucky. And when
23 you were lucky, you took it and were glad to get it
24 and when you were unlucky we complained about it
25 so. But it was just, you know, it was one of those

1 things that you expected but you had ownership of
2 the territory and so you did the best -- you did
3 the best you could do and took what you could get,
4 you know, out of it and it all equaled out.

5 Q I'm marking what's been Bates labeled
6 Abbott 0069696 to Abbott 0069697 as Defendant's
7 Exhibit 11. And Defendant's Exhibit 11 is now
8 before the witness. I'll give you a minute to look
9 it over. Do you recognize this document?

10 (WHEREUPON, Exhibit 11 was marked for
11 identification.)

12 A Yes.

13 Q And what is it?

14 A The incentive compensation report for
15 trimester three of '06.

16 Q And would this have been the trimester
17 following August 2006 trimester?

18 A Yes. Yes.

19 Q Do you recall receiving a bonus of
20 \$13,364.56 in December of 2006?

21 A No.

22 Q Is it possible that you received that
23 bonus?

24 A It's possible.

25 Q And do you recall accepting this bonus for